

**Request  
For  
Continued Examination (RCE)  
Transmittal**

Application Number	09/603,528
Filing Date	23 June 2000
First Named Inventor	FÄRBER, H.
Group Art Unit	1732
Examiner Name	Fontaine, M
Attorney Docket Number	21543

This is a Request for Continued Examination under 37 CFR 1.114 of the above-identified application.

**1. Submission required under 37 CFR 1.114**

- a.  Previously submitted
  - i.  Consider the amendment(s)/reply under 37 CFR 1.116 filed 8 July 2004.
  - ii.  Consider the arguments in the Appeal Brief or Reply brief filed \_\_\_\_\_.
  - iii.  Other \_\_\_\_\_.
- b.  Enclosed
  - i.  Amendment/Reply
  - ii.  Affidavit(s)/Declaration(s)
  - iii.  Information Disclosure Statement (IDS)
  - iv.  Other \_\_\_\_\_.

**COPY**

**2. Miscellaneous**

- a.  Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of \_\_\_\_\_ months.
- b.  Other \_\_\_\_\_.

**3. Fees**

- a.  The Director is hereby authorized to charge the following fees or credit any overpayments to deposit account 18-2025.
  - i.  RCE fee required under 37 CFR 1.17(e).
  - ii.  Extension of time fee under 37 CFR 1.136 or 1.17
  - iii.  Other \_\_\_\_\_.
- b.  Check in the amount of \$ \_\_\_\_\_.
- c.  Payment by credit card previously submitted (PTO-2038 copy attached).

**SIGNATURE OF ATTORNEY**

Name	Herbert Dubno	Reg. No.	19752
Signature	[Signature]		
	Date	9 July 2004	

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the the United States Postal service with sufficient postage as express mail in an envelope addressed to: Commissioner for Patents, Box Request for Continued Examination, Washington, D.C. 20231 on: 9 July 2004.

Name	Arlene Bernstein	EV031252551	
Signature	[Signature]	Date	9 July 2004

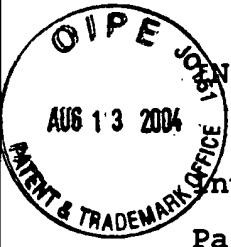
**BEST AVAILABLE COPY**

8/16/04

1732

Certificate of Facsimile Transmission

21543



THE U.S. PATENT AND TRADEMARK OFFICE

Inventor  
Patent App.

Horst FÄRBER

09/603,528

Filed

23 June 2000

Conf. No. 9899

For

SAMPLING TUBE AND METHOD OF MAKING SAME

Art Unit

1732

Examiner Fontaine, M

Hon. Commissioner of Patents  
Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION

The undersigned hereby requests withdrawal of the notice of improper request for continued examination which issued 29 July 2004. A copy of that notice is returned with this reply.

This communication follows a telephone call from Arlene Bernstein of the office of the undersigned to Ms. Hensley.

On 8 July 2004 the Patent and Trademark Office timely received (see postcard), a request for continued examination (copy attached) along with a submission as required by 37 CFR 1.114 in the form of an amendment after final action. The postcard receipt acknowledges both and the requisite extension of the term and the fee for both the extension and the request for continued examination.

I hereby certify that this paper is being transmitted by facsimile to the United States Patent and Trademark Office on the below-given date.

AUG 13 2004

EV031252786

Name of person signing

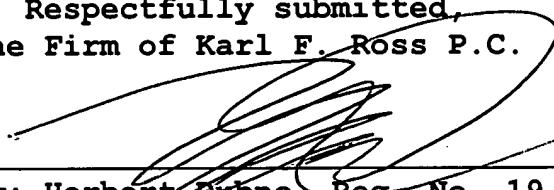
Signature

Since the request for continued examination was not in the standard form, the standard form was submitted on the next day, 9 July 2004 together with a copy of the fee charge form.

Apparently, Ms. Hensley acknowledged only the latter form without recognizing that it was simply intended to supplement the document filed on the previous day.

Since on 9 July 2004 there was in the Patent and Trademark Office, within the term as extended by the petition for extension filed here, both the request for continued examination on proper form and the submission under 37 CFR 1.114, the request for continued examination was not improper and the notice should be withdrawn along with any abandonment of the application.

Respectfully submitted,  
The Firm of Karl F. Ross P.C.

By:   
Herbert Dubno, Reg. No. 19,752  
Attorney for Applicant

db-

DATED: August 4, 2004  
5676 Riverdale Avenue Box 900  
Bronx, NY 10471-0900  
Cust. No.: 535  
Tel: (718) 884-6600  
Fax: (718) 601-1099  
Encls: Copy of Notice  
Postcard  
Copy of Request



UNITED STATES PATENT AND TRADEMARK OFFICE

AUG 13 2004

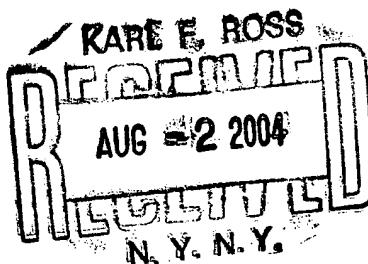
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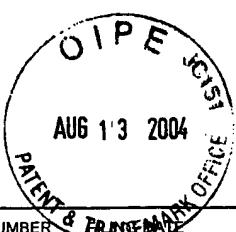
APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,528	06/23/2000	HORST FARBER	21543	9899
535	7590	07/29/2004	EXAMINER	
THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900			ART UNIT	PAPER NUMBER

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



BEST AVAILABLE COPY



**Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450,  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)**

**APPLICATION NUMBER**

**FIRST NAMED APPLICANT**

ATTY. DOCKET NO./TITLE

**DATE MAILED:**

**NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)**

The request for continued examination (RCE) under 37 CFR 1.114 filed on 7/9/04 is improper for reason(s) indicated below:

- 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
- 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
- 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date **on or after June 8, 1995** will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

***A copy of this notice MUST be returned with any reply.***

Direct the reply and any questions concerning this notice to:

Reed Hensley, Technology Center 1700  
(703) 308-7457 571-272-1026